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# In the Supreme Court of the United States

OCTOBER TERM, 1970

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No. 507

CALIFORNIA DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT, ET AL., APPELLANTS

*v.*

JUDITH JAVA AND CARROLL H. HUDSON, ET AL.

---

*ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA*

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**BRIEF FOR THE UNITED STATES AS AMICUS CURIAE**

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## OPINION BELOW

The opinion of the district court is reported at 317 F. Supp. 875.

## JURISDICTION

The judgment of the three-judge district court declaring Section 1335 of the California Unemployment Insurance Code unconstitutional and enjoining its enforcement was entered on May 14, 1970 (App. 133). Notice of appeal was filed on June 12, 1970. Probable jurisdiction was noted on October 26, 1970. The jurisdiction of this Court rests on 28 U.S.C. 1253.

## QUESTIONS PRESENTED

1. Whether a state procedure that requires the withholding of unemployment compensation benefits pending an initial administrative appeal is a method of administration "reasonably calculated to insure full payment of unemployment compensation when due" within the meaning of 42 U.S.C. 503(a)(1).

2. Whether a State's withholding of unemployment compensation benefits pending an administrative appeal is constitutionally permissible.

## STATUTES INVOLVED

Section 1335 of the California Unemployment Insurance Code provides:

> If an appeal is filed, benefits with respect to the period prior to the final decision on the appeal shall be paid only after such decision, except that:
>
> (a) If benefits for any week are payable in accordance with a determination by the department irrespective of any decision on the issue set forth in the appeal, such benefits shall be promptly paid regardless of such appeal, or
>
> (b) If a referee affirms a determination allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, and regardless of any action taken under Section 1336 or otherwise by the director, Appeals Board, or other administrative body or by any court.
>
> If such determination is finally reversed, no employer's account shall be charged with benefits paid because of that determination.

Section 303(a)(1) of the Social Security Act, 42 U.S.C. 503(a)(1), provides in part:

> (a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provision for:
>
> (1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; * * *

## INTEREST OF THE UNITED STATES

The United States has a substantial interest in the administration of the California Unemployment Insurance Program under review on this appeal. All costs necessary for the prompt and efficient administration of the California program, and of all federal-state cooperative unemployment insurance programs, are paid by grants from the United States pursuant to the Social Security Act, 42 U.S.C. 501–503. No grant may be made to a State for a fiscal year unless the Secretary of Labor certifies the amount to be paid. 42 U.S.C. 502(a). Under Section 303, 42 U.S.C. 503, the Secretary of Labor may not certify any payments unless he first finds that the State's program conforms to the federal requirements set forth in that Section.

The issues raised on this appeal concern one of those requirements, specifically the required state method of administration under Section 303(a)(1), and necessarily draw into question the Secretary's continued statutory authority to certify the program in California and other States having similar methods of administration.

## STATEMENT

Following their separation from employment in California, appellees Java and Hudson filed claims for unemployment compensation with the California Department of Human Resources Development (App. 8–9).[1] In both instances, the Department initially determined that they were eligible to receive unemployment compensation and immediately commenced payments to them (App. 8–9). In each case, upon the former employer's filing of an administrative appeal,[2]

[1] Upon filing a claim, the claimant supplies the interviewer with information concerning his work experience, his former employment and his reason for no longer working (App. 135). His former employer is notified of the claim and is asked to furnish information that might affect the claimant's eligibility. Cal. Unemp. Ins. Code § 1327. The claimant then appears for an interview (App. 130–131). If a question of eligibility has arisen, because of either the employer's protest or other facts, the interviewer must make a determination of eligibility (App. 120–121). If necessary, the interviewer will seek more information relating to the claim before making a determination (App. 121–123). If the claimant is determined eligible, payments begin immediately (App. 131–132).

[2] Under Section 1328 of the California Unemployment Insurance Code, an employer may "appeal" a claims interviewer's eligibility determination by requesting a hearing before a referee, if such request is made within 10 days. "A referee after affording a reasonable opportunity for fair hearing, shall, unless such appeal is withdrawn, affirm, reverse, or modify any

the Department, as required by Section 1335 of the California Unemployment Insurance Code, halted further payment of benefits pending hearing and decision of the appeal.[3]

The employees commenced a class action in the district court on behalf of themselves and other claimants similarly situated, seeking a declaration that Section 1335 of the California Unemployment Insurance Code is unconstitutional, and inconsistent with Section 303(a)(1) of the Social Security Act, *supra*, and seeking an order restraining the operation of Section 1335.

The three-judge court concluded that the challenged statute did not comply with Section 303(a)(1) of the Social Security Act, which requires each State, as a prerequisite to federal financial assistance, to administer its unemployment compensation program in a manner "reasonably calculated to insure full payment of unemployment compensation when due." The court held that benefits are "due" to a claimant in California when a favorable administrative determination

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determination which is appealed." Cal. Unemp. Ins. Code § 1334. The referee's decision becomes "final, unless within 10 days after mailing of such decision, further appeal is initiated to the Appeals Board." *Id.* § 1334. The Appeals Board, which must render its decision within 60 days after the filing of an appeal to it, *id.* § 1337, "may on its own motion affirm, modify, or set aside any decision of a referee on the basis of evidence previously submitted in the case, or may direct the taking of additional evidence." *Id.* § 1336.

[3] If upon appeal the referee finds the claimant eligible, payments begin at once even if the employer appeals further. Cal. Unemp. Ins. Code § 1335(b). See *Abelleira* v. *District Court of Appeal*, 17 Cal. 2d 280, 109 P. 2d 942.

is made by the eligibility interviewer and, accordingly, the federal statute requires that such benefits thereafter be promptly paid (App. 137, 139). In the court's view, application of Section 1335 constituted a failure to pay unemployment compensation "when due" because an average appeal took six to seven weeks (App. 139).

Relying on *Goldberg* v. *Kelly*, 397 U.S. 254, the court also held that the California procedure denying benefits pending decision of an employer's appeal constituted a denial of procedural due process (App. 138–139).

## SUMMARY OF ARGUMENT

### I

Section 1335 of the California Unemployment Insurance Code complies with Section 303(a)(1) of the Social Security Act, which requires state methods of administration of unemployment compensation plans to be "reasonably calculated" to insure payment of benefits "when due." The Committee on Economic Security, which had proposed the Social Security Act, distributed to Congress and the States two "model laws," both of which contained procedures similar to California's Section 1335. Moreover, Congress indicated approval of such a procedure by making it applicable to the District of Columbia. It cannot reasonably be supposed that the Committee's proposals and Congress' legislation with respect to the District of Columbia, which set an example for the States to follow, contemporaneously violated the Act.

The fact that California has modified the procedure contemplated in the "model laws" by starting payments immediately after the interviewer's determination rather than only after the employer's time to appeal has expired does not transform an otherwise valid procedure into an invalid one. Congress surely could not have intended to preclude States now following the "model laws" approach from adopting California's practice, which is more favorable to the vast majority of claimants because it allows payments to begin earlier.

Nor is the average six-to-seven week period required for California's hearing and decision of the employer's appeal inconsistent with federal requirements. The Secretary of Labor, in certifying California's program, has not considered this delay unreasonable, although he is concerned about the general problem of delay and is presently considering promulgating federal standards with respect to this subject.

## II

California's Section 1335 does not deny claimants due process. This case is unlike *Goldberg* v. *Kelly*, 397 U.S. 254, because the procedures involved here concern the entitlement stage rather than the termination stage as in *Kelly*. The Constitution does not require payments to begin merely upon the filing of an application and, consequently, California could have chosen any of several other constitutionally permissible ways

of administering its program, such as having the interviewer defer decision on contested claims until after hearing. Many of these alternative procedures would adversely affect the 95 percent of claimants who never go beyond the interviewer stage under the present California practice.

We believe the district court erred in viewing the withholding of payments upon the employer's appeal as, in effect, equivalent to suspending benefits which had previously been granted. The interviewer's determination is only a provisional one which serves the purpose of quickly filtering out uncontested claims. That California begins paying benefits immediately after the interviewer's determination shows only that it has wisely decided not to disadvantage 95 percent of its claimants, who never go beyond this stage, simply because in 5 percent of the cases eligibility must be decided after an employer-requested hearing. Since it is permissible for a State not to start payments until the employer's time to appeal has expired, there is no reason for condemning California's more efficacious approach.

In light of the available alternative methods of administering an unemployment compensation program, the reasons underlying California's choice among them, and other relevant considerations, California has not denied claimants due process by following the procedures prescribed by Section 1335.

## ARGUMENT

### I. SECTION 1335 OF THE CALIFORNIA UNEMPLOYMENT INSURANCE CODE COMPLIES WITH SECTION 303(a)(1) OF THE SOCIAL SECURITY ACT

Under the general scheme[4] of unemployment insurance, compensation is paid to eligible individuals pursuant to state unemployment compensation laws, which are administered by state agencies.

Actual payments to unemployed workers come from state funds raised by contributions levied on employers. However, necessary costs for proper and efficient administration of the State's program are paid by the federal government if, pursuant to Section 303 (a) of the Social Security Act, *supra,* the Secretary of Labor finds that the State's laws conform to federal requirements.

One such requirement is the provision in Section 303(a)(1) of the Social Security Act, *supra,* that

> The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State * * * includes provision for—
>
> (1) Such methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due * * *.

[4] The federal program initially was established by Titles III and IX of the Social Security Act of 1935, 49 Stat. 620, 626, 639. These titles, as most recently amended by the Employment Security Amendments of 1970, P.L. 91-373, 84 Stat. 695, now constitute 42 U.S.C. 501-504 and the Federal Unemployment Tax Act (FUTA), 26 U.S.C. 3301-3311.

From the beginning, the Secretary of Labor has found procedures, such as those followed in California, to be consistent with Section 303(a)(1). Indeed, withholding payment until after hearing and decision of the initial administrative appeal is the procedure currently followed by the great majority of States with federally-approved programs. We believe that in certifying these programs for federal grants, the Secretary correctly construed Section 303(a)(1).

When the Social Security Act of 1935 was being considered by Congress, the President's Committee on Economic Security, which had prepared the initial drafts of the Act, circulated to the States and submitted to Congress two "model laws" prepared by the Committee to help the States formulate unemployment compensation laws meeting federal requirements. The Committee presumably recognized that for the vast majority of cases, eligibility for compensation would be clear and hearings would be unnecessary. Accordingly, prompt and efficient administration could be accomplished by having all claims initially screened by low-level administrators without the delay and formality of hearings. However, the Committee also apparently recognized that in some cases, undoubtedly a small minority, eligibility determinations would give rise to difficult questions of fact or law. One solution would have been to have the interviewer defer decision in such cases and automatically set them down for hearing before a referee. However, the Committee proposed a different approach, apparently based on the belief that employers would gen-

erally accept adverse determinations by claims interviewers without seeking a hearing and that, in the main, the claims for which employers would request hearings would be those involving substantial questions.[5] Thus, in Section 8 of both state model laws the Committee recommended that when a hearing is requested, benefit payments not be made pending the outcome of the referee's decision.[6]

> (2) *Initial determination.*—A deputy designated by the commission shall promptly determine whether or not the claim is valid, and the amount of benefits *apparently* payable thereunder, and shall duly notify the employee and his most recent employer of such decision. Benefits shall be paid or denied accordingly, unless either party requests a hearing within 5 calendar days after such notification was delivered to him or was mailed to his last known address [emphasis added].
>
> (3) *Appeals.*—Unless such request for a hearing is withdrawn, the claim thus disputed shall be promptly decided after affording both parties reasonable opportunity to be heard * * *.

In apparent agreement with the Committee's suggestion, the same session of Congress that enacted the Social Security Act of 1935 also enacted an unemployment compensation law for the District of Columbia, 49 Stat. 946, Section 12 of which provided that if

[5] The experience in California bears this out: in 95 percent of the cases employers do not seek a hearing (App. 137), and nearly 50 percent of the claims where employers seek hearings are reversed (App. 104).

[6] *Hearing on S. 1330 Before the Senate Committee on Finance*, 74th Cong., 1st Sess. 591, 602, 623.

an appeal is filed "no benefits shall be paid" to the claimant until the appeal is decided.

The Social Security Act of 1935 was approved on August 14, 1935, and approval of the District of Columbia Unemployment Compensation Act followed just 14 days later on August 28. In this situation, it would be unreasonable to suppose that Congress contemporaneously violated its own mandate when it implemented the Social Security Act in the District of Columbia and thereby set an example for all the States to follow.[7] And it is similarly inconceivable that the Committee on Economic Security would offer to the States a suggested method of administration out of conformity with the very legislation it had proposed to Congress, and which became the Social Security Act of 1935. In short, Congress' adoption of the equivalent to the model laws' Section 8 manifests the understanding that this provision conformed to the federal standard in Section 303(a)(1), requiring that the State's method of administration be "reasonably calculated to insure the full payment of unemployment compensation when due."

In Section 1335 of its Unemployment Insurance Code, California has thus followed not only the recommendation of the Committee on Economic Security but also the implicit, if not explicit, suggestion of Congress through its legislation with respect to the District of

[7] Only Wisconsin had adopted an unemployment compensation law before it became apparent that the federal bill would be passed. See *Steward Machine Co. v. Davis*, 301 U.S. 548, 587–588.

Columbia. That only a small percentage of California claimants experience delay in receiving benefits illustrates the wisdom and success of this procedure. But more important, it also shows that California has adopted a method that is "reasonably calculated" to pay compensation when due, as Section 303(a)(1) of the Social Security Act requires.

In one respect, California has gone beyond the model laws: it has decided to pay benefits immediately upon the interviewer's eligibility determination rather than after the employer's ten-day period for requesting a hearing expires. Of course, in all but a small percentage of cases there is little reason for waiting; the interviewer's determination will be the end of the matter. The fact that for this reason California begins payments immediately surely does not transform an otherwise valid method of administration into an invalid one. It would be pure formalism to characterize, on the basis of this practice, compensation payments as "due" after the interviewer's determination and then use this characterization to show that in cases where employers request hearings, "due" payments are delayed in violation of Section 303(a)(1). For this rationale would result in the anamolous circumstance that state procedures allowing payments to begin only after the employer's time to appeal has run would conform to Section 303(a)(1), while procedures such as California's would not. Thus, precluding California (and other States) from continuing its present practice would disadvantage the vast majority of

claimants who never go beyond the initial stage and prevent other States from adopting California's more favorable practice—a result Congress surely could not have intended.

Nor is the average six-to-seven week period required for California's hearing and decision of the appeal inconsistent with federal requirements. Congress must have realized that some delay would occur. Indeed, at the time Congress passed the Social Security Act, the number of unemployed averaged more than 10 million;[8] the sheer magnitude of the number of claims Congress knew would have to be handled in itself refutes any notion that the Act was intended to require immediate hearing and decision on each claim. Of course this not to say that unreasonable delays are, or should be, tolerated. The Secretary of Labor is cognizant of the need for increased promptness and, insofar as it is possible to shorten the delay without denying a fair hearing to the participants, he intends to effectuate improvements.[9] But, as the Secretary has concluded by certifying California's program, the time for decision on appeal in that State should not now be considered unreasonable.[10]

In our view, therefore, the district court should have held California's method of administration to be consistent with Section 303(a)(1).

---

[8] See *Steward Machine Co.* v. *Davis*, 301 U.S. at 586.

[9] The Secretary is presently considering the wisdom and feasibility of promulgating a specific federal standard of the time within which each State must complete its procedures for determining whether benefits are due.

[10] See Brief for the Appellant, at 15.

## II. SECTION 1335 OF THE CALIFORNIA UNEMPLOYMENT INSURANCE CODE IS CONSTITUTIONALLY VALID

In *Goldberg* v. *Kelly*, 397 U.S. 254, the issue was "whether the Due Process Clause requires that the [welfare] recipient be afforded an evidentiary hearing *before* the termination of benefits." 397 U.S. at 260 (emphasis in original). This Court answered in the affirmative. To the district court, the instant case was indistinguishable from *Kelly* and, consequently, it held that under Section 1335 of the Unemployment Insurance Code, California denied claimants due process by withholding benefit payments pending the outcome of employer-requested hearings.

Neither the district court's opinion in the present case, nor this Court's decision in *Kelly*,[11] would prohibit a State from withholding compensation benefits until eligibility is initially determined; surely nothing in the Constitution requires payments to begin merely upon the filing of an application.[12] Thus, whether the district court correctly analogized this case to *Kelly* hinges on the validity of its view that after an interviewer makes an eligibility determination, matters pass beyond the entitlement stage so that benefits thereafter granted cannot be "terminated" without a prior hearing. We believe that this view of California's procedure, which the district court based on the

[11] See *Wheeler* v. *Montgomery*, 397 U.S. 280, 284–285 (Chief Justice Burger, dissenting).

[12] Of course due process may require that an eligibility hearing be held. See *Greene* v. *McElroy*, 360 U.S. 474, 496. At what stage of the process this is required is another matter.

State's practice of beginning payments immediately after the interviewer's determination, is unwarranted and that California's method of administration does not violate the due process clause.

For welfare-termination cases, this Court's decision in *Kelly* gave the states two alternatives: (1) hold a pretermination hearing; or (2) continue payments until the statutory "fair hearing" is held, even though there has been a prior decision to terminate, 397 U.S. at 266–267 & n. 14. But *Kelly* dealt with termination of benefits. Procedures at the entitlement stage, which are at issue here, involve additional considerations. One way for California to comply with the district court's judgment would be to pay benefits until after hearing and decision.[13] This assumes, however, that California would find it feasible to retain its present method of evaluating applications in light of the district court's modification. Obviously that would not necessarily be the case. For there are several other ways of handling claims and the difficulty is that some of these not only may fail to prove as effective for the vast majority of claimants as the method California has been following, but also may not significantly improve matters with respect to claimants situated similarly to those in this case.

For example, California could simply abolish the screening function performed by the interviewer and automatically set each claim down for hearing (in the absence of waiver by the employer). Or it could refrain from paying benefits until after the employer's

[13] Rhode Island now follows such a practice. R.I. Gen. Laws § 28–44–40.

time to appeal expired, thus making clear that the interviewer's determination is only a provisional one intended to filter out uncontested claims expeditiously.[14] Along similar lines, the State could require the interviewer to defer decision and set the case down for hearing before a referee whenever the employer challenges a claim in writing.[15] Still another alternative would be to have the interviewer himself hold a hearing whenever a question of eligibility is raised.[16]

As previously indicated, none of the foregoing methods of determining eligibility would be precluded by *Kelly*, since none of these procedures would involve the withdrawal of benefits previously granted. Of course, we do not mean to suggest that each is a suitable plan, still less that all are equally desirable. That is a judgment Congress left to the individual States so long as certain standards are met. The size of its workforce, the distribution of its population, the nature of its industry, the rate of unemployment, the quantity and quality of available administrators—these and other factors bear on what is best for a particular State.

Hence, the issue here comes down to this: in light of the alternative methods of administering an unemployment compensation program, has California chosen one that violates due process? The answer, we submit, is "No."

As we mentioned at the outset, the district court

[14] See, *e.g.*, D.C. Code § 46–311(b); Ark. Stat. § 81–1107(e).

[15] Compare *Willner* v. *Committee on Character and Fitness*, 373 U.S. 96, 107–108 (concurring opinion).

[16] North Carolina now follows a similar practice. See N.C. Gen. Stat. § 96–15(b)(2).

found this case analogous to a termination-of-benefits case solely because California begins payments immediately after the interviewer's provisional determination. Of course, if California, like many other States,[17] were to begin payments only after expiration of the time to appeal [redacted] and only after hearing and decision if the appeal is taken, there would be no basis for concluding that during the six-week period for decision on appeal, claimants were being deprived of benefits which had previously been granted. Under that procedure (suggested in the model acts, *supra,* p. 11) it would be clear that the interviewer's provisional determination performed only a screening function. However, California has chosen to begin payments immediately. And it has done so not because it views the interviewer's decision as anything more than provisional, but rather because it decided not to have all claimants wait ten days when, in more than 95 percent of the cases, the interviewer's determination would become final anyway. Of these two methods of administration, California's present procedure is certainly more efficacious for all categories of claimants. Accordingly, what we said with respect to the appellees' statutory claim is equally relevant here: it would make no sense—and, indeed, would be detrimental to claimants—to hold that California's procedure violates the Constitution

[17] See note 14, *supra.* In the United States' view, a State does not deny an *employer* due process by beginning payments immediately

when otherwise identical plans which provide instead for a preliminary ten-day waiting period clearly do not.

In sum, when one considers "the available alternatives to the procedure" California has followed, "the reasons for" California's following that procedure, "the balance of hurt complained of and good accomplished" for more than 95 percent of the claimants, and "the interest that has been adversely affected,"[18] which is not accurately framed in terms of the withholding of benefits already granted—in short, when the traditional ingredients of due process are considered, it is clear that California has not violated that constitutional requirement.

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after a referee's decision, even though the employer appeals from that decision and may eventually seek judicial review. See, *e.g.*, *Abelleira* v. *District Court of Appeal*, 17 Cal. 2d 280, 109 P. 2d 942; *Aero Design & Engineering Co.* v. *Oklahoma Employment Security Commission*, 151 F. Supp. 844 (W.D. Okla.), affirmed *per curiam*, 353 U.S. 943; *Abraham* v. *Van Meter*, 303 P. 2d 434 (Okla.), appeal dismissed, 353 U.S. 944; *Todd Shipyards Corp.* v. *Texas Employment Commission*, 245 S.W. 2d 371 (Tex. Civ. App.); *State* ex rel. *Aikens* v. *Davis*, 131 W.Va. 40, 45 S.E. 2d 486. But see *State* ex rel. *Campbell* v. *State*, 223 Ind. 59, 57 N.E. 2d 433; *Dallas Fuel Co.* v. *Horne*, 230 Iowa 1148, 300 N.W. 303; *Chrysler Corp.* v. *Unemployment Compensation Commission*, 301 Mich. 351, 3 N.W. 2d 302; *Pennsylvania State Chamber of Commerce* v. *Torquato*, 386 Pa. 306, 125 A. 2d 755, certiorari denied, 352 U.S. 1024.

[18] The quotations are from Mr. Justice Frankfurter's concurring opinion in *Joint Anti-Fascist Committee* v. *McGrath*, 341 U.S. 123, 149, 163.

## CONCLUSION

The judgment of the district court should therefore be reversed.

Respectfully submitted.

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